

U.S. DEPARTMENT OF HOMELAND SECURITY

COAST GUARD

USCG-2003-14472 -58

VESSEL DOCUMENTATION:

LEASE FINANCING FOR VESSELS ENGAGED IN THE COASTWISE
TRADE; SECOND RULEMAKING

PUBLIC COMMENT

FRIDAY

APRIL 2, 2004

The Public comment meeting was held in Room 2230 in the Nassif Building, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C., at 9:00 a.m., Captain Joseph Brusseau, U.S. Coast Guard, presiding.

PRESENT

CAPTAIN JOSEPH BRUSSEAU	U.S. Coast Guard
MURRAY BLOOM	Maritime Administration
JOHN MARQUEZ	Maritime Administration
ALEX WELLER	U.S. Coast Guard
TOM WILLIS	U.S. Coast Guard

SPEAKERS

JENNIFER CARPENTER
ROBERT ALARIO
MICHAEL ROBERTS
JOHN DeVIerno
BRIAN MILLER
PHILIP GRILL
NED MORAN
JAMES SWEENEY
MORT BOUCHARD
SKIP VOLKLE
JOHN NICOLA
ALAN BUTCHMAN
MARINUS QUIST

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P-R-O-C-E-E-D-I-N-G-S

9:03 a.m.

CAPTAIN BRUSSEAU: I've got a few minutes after nine, so I'd like to go ahead and get started on our public meeting.

Welcome. This is the -- if I stand here, can you hear in the back or do I need to hold this? Welcome to the public meeting on lease financing. This is the public meeting that was advertised in the Federal Register of the 11th of March 2004. This is a joint public meeting on behalf of the Coast Guard and the Maritime Administration on proposed rules for lease financing for vessels in the coastwise trade.

I'm Captain Joe Brusseau. I'm Director of Field Activities in the Coast Guard's -- for the Assistant Commandant for Marine Safety, Security and Environmental Protection. And with me at the front table to hear your comments are -- in the center is Tom Willis, Director of the National Vessel Documentation Center for the Coast Guard. Sitting next to him on my immediate right is Alex Weller, Staff Attorney for the Coast Guard. To Mr. Willis' right is Mr. Murray Bloom who is Chief of the Division of the Maritime Programs for Maritime Administration's Office of the Chief Counsel, and on his right is

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1 Senior Attorney John Marquez.

2 My chief function here today is to kick
3 this off and to tell you where the cafeteria is, and
4 I'm not kidding about that. If you do need some
5 refreshments, the cafeteria is located in the
6 basement. You can take the elevator to the right as
7 you exit this room, down to the plaza level, exit the
8 building through the glass doors to the plaza, walk
9 straight ahead, and on your right you'll see the sign
10 above the entrance to the stairwell to the cafeteria.

11 Restrooms and the water fountain are located just
12 around the corner to the right as you exit here.

13 We would like to keep a record of who
14 attended this meeting, so if anyone has not signed in,
15 I would ask you to do so at this time. The sign-in
16 sheets are located just next to the door. You should
17 have passed those on the way in.

18 We will call speakers from the sign-in
19 sheets and from our advanced notice of those who
20 wanted to speak in the order in which you signed in,
21 and that will come immediately after we call for those
22 who have notified us in advance.

23 As indicated in the Federal Register
24 Notice, the purpose of this meeting is to receive
25 additional comment on the proposed rule. When your

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1 name is called from the list of speakers, I'd ask you
2 to come forward and make your remarks at the
3 microphone provided. Your comments are being recorded
4 on audiotape, and for this reason everyone presenting
5 comments are requested to state your name, state the
6 name of any company or organizational affiliation.
7 And this will help us identify you later as we listen
8 to the tape.

9 This meeting is conducted using the
10 informal rulemaking process established by the
11 Administrative Procedures Act. It is not an
12 adversarial procedure. There will be no cross
13 examination of speakers, although we may ask you
14 questions in order to clarify your comments.
15 Substantial issues raised in the comments received
16 will be addressed in the preamble to the next
17 publication in this rulemaking. The Coast Guard and
18 the Maritime Administration may change the rules in
19 response to these comments.

20 The time available for this meeting is
21 limited. We have roughly six hours, from nine o'clock
22 until three o'clock this afternoon. In order to allow
23 all present a reasonable opportunity to speak, we ask
24 you to make your remarks concisely and clearly. We
25 have to reserve the right to limit the length of

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1 comments at any time. I'll be the referee for that.
2 Comments must be relevant to the issues contained in
3 the rules, and those wishing to address other issues
4 will be asked to do so in another forum.

5 I recognize many of you here this morning.

6 It's good to see you all. Thank you for coming out
7 on a rainy day. This is a rulemaking that is
8 difficult. There are two definite sides for this, and
9 the Coast Guard and the Maritime Administration truly
10 want to understand both points of view. Thank you for
11 being willing to come here and to share your time with
12 us so that we can understand your points of view.

13 And with that, I will go ahead and get
14 started. I'll ask Mr. Tom Willis to initiate the list
15 of speakers, please.

16 MR. WILLIS: Good morning. Let me repeat
17 Captain Brusseau's welcome and thanks for coming.
18 Also, we didn't have a chance to touch on one issue.
19 As all of you know, lease financing has been fraught
20 with many surprises along the way. Well, even the
21 cafeteria is a surprise. That's apparently a major
22 hurdle to get in and out because of escort issues. So
23 if we come to that, we'll have to work something out.

24 CAPTAIN BRUSSEAU: Let me volunteer, if
25 anybody gets hungry, raise your hand, catch my eye, I

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1 will escort you in there.

2 (Laughter.)

3 MR. WILLIS: I'm not going to go back over
4 the issues of the Notice of Proposed Rulemaking. I'm
5 sure you've all read them, and I'm sure you've all had
6 a great deal of discussion, so since this is your
7 meeting and our opportunity to learn from you, I'm
8 going to simply call upon the first speaker, Ms.
9 Jennifer Carpenter, with American Waterways.

10 MS. CARPENTER: Well, I'll just speak
11 until about 2:45 or so, so that we've got plenty of
12 time for everybody else and we can still get out of
13 here on time.

14 Good morning. I'm Jennifer Carpenter from
15 the American Waterways Operators. AWO is the national
16 trade association for the inland and coastal tugboat,
17 towboat and barge industry. And the industry that AWO
18 represents is the largest segment of the U.S. flag
19 domestic fleet. We operate some 4,000 towing vessels,
20 about 28,000 barges, we employ more than 30,000 crew
21 members and sustain thousands more shoreside jobs for
22 American men and women. We move 800 million tons of
23 cargo annually for U.S. shippers.

24 AWO's members are American companies
25 ranging from large public companies to small fourth

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1 generation family businesses, and you'll hear from
2 several of them this morning. Together, these
3 companies have made a multibillion dollar investment
4 in vessels and shoreside infrastructure to serve the
5 U.S. domestic trade in a safe, secure, efficient and
6 environmentally sound manner.

7 The whole basis for that investment and
8 the statutory foundation of the entire domestic
9 maritime industry is the Jones Act, and our message to
10 you today is simple: Both the integrity of the Jones
11 Act and the future of the U.S.-controlled domestic
12 maritime industry will remain in jeopardy unless this
13 rulemaking is completed quickly, as proposed in the
14 February 4 Notice of Proposed Rulemaking.

15 In our view, the Coast Guard's February 4
16 final rule took a major step toward closing the lease
17 financing loophole that has undermined 200 years of
18 U.S. maritime law and policy, and we very much
19 appreciate the Coast Guard's recognition of the
20 importance of the issues at stake in this proceeding.

21 However, the job is not finished. Unless the Coast
22 Guard and MARAD take immediate action to resolve the
23 issues raised in the NPRM, the lease financing
24 loophole will only have been narrowed, not eliminated.

25 The Jones Act and U.S. control of the domestic

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1 maritime industry will remain at risk.

2 AWO will, of course, submit detailed
3 written comments to the docket before the May 4
4 deadline, but let me just touch on the three simple
5 points of our message here today. First, the Coast
6 Guard should prohibit charter-back arrangements in
7 which a lease finance vessel is chartered back to the
8 vessel owner or a member of the owner's group of
9 companies, except when the vessel is engaged in
10 carrying proprietary cargo for the vessel owner or a
11 member of the owner's group. Unless this change is
12 made, as proposed in Alternative 2 of the NPRM,
13 foreign vessel owners will retain the ability to
14 control vessels used in the domestic trade for the
15 carriage of cargo for hire despite the clearly
16 expressed intent of Congress to prohibit such control.

17 Second, the Coast Guard should impose a
18 three-year time limit on the grandfathering of
19 coastwise endorsements issued before the February 4
20 final rule, as proposed in the NPRM. Three years is
21 ample time for a vessel owner to restructure his
22 investments as necessary to ensure compliance with the
23 regulations.

24 Finally, effective administration of the
25 lease financing regulations is critically important.

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1 We recognize that the Coast Guard may not have the in-
2 house expertise that it needs to evaluate whether an
3 application for documentation meets the standards of
4 the regulations in all cases. We believe that the
5 most effective and, for the government, cost-effective
6 way to address this need is by providing the
7 opportunity for public scrutiny of applications which
8 may raise questions.

9 The Coast Guard should develop a procedure
10 in which applications that meet certain defined
11 criteria -- and we'll elaborate on this in our written
12 comments -- are subject to public notice and comment.

13 We think letting the sunshine in will allow the
14 Agency to leverage the expertise of the interested
15 private sector and will go a long way toward ensuring
16 that transactions that do not meet the regulatory
17 requirements are stopped before a coastwise
18 endorsement is issued, not after the fact.

19 The Coast Guard should also retain the
20 ability to consult with other government agencies,
21 most notably MARAD, and to contract with private
22 sector experts as needed in order to ensure that the
23 administration of the lease financing regulations is
24 as scrupulous as the gravity of the subject matter
25 requires.

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1 On behalf of AWO, I want to thank the
2 Coast Guard and MARAD for holding this hearing today
3 and for signaling through your proposals in the NPRM
4 that you understand the importance of the issues at
5 stake. We urge you to move immediately to finalize
6 this rulemaking in a way that maintains the integrity
7 of the Jones Act, fulfills the narrow purpose of the
8 1996 lease financing legislation and protects the
9 multibillion dollar investment that companies like
10 AWO's members have made in reliance on 200 years of
11 maritime law and policy.

12 We'll submit detailed written comments for
13 the docket. I'd be happy to answer any questions that
14 you may have this morning.

15 MR. WILLIS: Thank you, Ms. Carpenter.
16 Our next speaker is Mr. Robert Alario of OMSA.

17 MR. ALARIO: Good morning. Thank you,
18 gentlemen. The Captain was right. There are two
19 sides to this issue. On the one hand, we have
20 Budreaux, and on the other hand, we have Thibideux,
21 and I'm here to represent them both.

22 (Laughter.)

23 My name is Robert Alario, and I'm
24 President of the Offshore Marine Service Association.
25 Our Association represents the vast majority of

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1 vessel owners and operators that are involved in
2 support of the offshore oil and natural gas,
3 exploration and production industry on the Outer
4 Continental Shelf of the United States. We represent
5 a U.S. fleet in excess of 1,200 vessels and more than
6 12,000 seamen and the collateral jobs that we support
7 are significant in number. And this issue is of
8 critical importance to our industry and I think to our
9 country in the final analysis.

10 To this day, the majority of vessel
11 operating companies that support our vital domestic
12 offshore oil and natural gas production are family
13 owned businesses. Since 1996, we estimate that U.S.
14 Section 2 owners have spent over \$700 million building
15 alone deepwater offshore support vessels, which is
16 really just a new segment of our industry, with
17 additional significant funds being spent on
18 construction of small and different support vessels.

19 This investment in the future of our
20 domestic offshore oil and gas support fleet was made
21 in reliance of protections offered by the Jones Act.
22 The protections that the Jones Act provides to this
23 segment of our industry and to others are therefore
24 clearly vital to the financial viability of the
25 defense and support of this critical industry and

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1 other maritime sectors, as represented by AWO and
2 other associations which you will hear from in the
3 course of this comment period.

4 In the absence of regulatory guidelines,
5 we contend that that industry had been seriously
6 compromised by an expansive interpretation and loose
7 implementation of the lease finance provisions of the
8 Coast Guard Authorization Act of 1996 until the recent
9 promulgation of rules. The Offshore Marine Service
10 Association and its U.S. Section 2 member operators
11 have taken the firm position that the lease finance
12 provisions of the Coast Guard Authorization Act of
13 1996 was intended as a very limited exception to the
14 U.S. ownership and control provisions of the Jones
15 Act. We're, therefore, encouraged as a result of the
16 recent promulgation by the U.S. Coast Guard of both of
17 the final rule and the proposed second rulemaking,
18 both of which go a long way toward closing dangerous
19 loopholes that had been exploited in the initial
20 implementation of the lease finance provisions.

21 With the exception that a very few but
22 critical legislative corrections may be required, we
23 stand in support of the final rule and to comment here
24 today on the proposed rulemaking. There are still a
25 number of areas in the proposed rules that require

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1 clarification at least. I will keep our verbal
2 comments brief and simply highlight those areas that
3 in our opinion need further attention and work.
4 Consequently, beyond my comments today, we will be
5 submitting additional detailed written comments to the
6 docket to supplement our remarks.

7 Our topical comments will follow the same
8 order in which they are discussed in the Coast Guard
9 and MARAD's proposed rulemaking. One, in the body of
10 discussion of the proposed rulemaking, the Coast Guard
11 raises the issue as to the extent and precisely how
12 the Coast Guard should prohibit or restrict chartering
13 back of a lease finance vessel from the U.S. demise
14 charter to the owner, the parent of the owner or to a
15 subsidiary or affiliate. The Coast Guard states that
16 this question is addressed in modified Sections 46 CFR
17 Part 67.20(a)(6) and (a)(9).

18 The proposed rule would therefore revise
19 46 CFR 67.20(a)(6) to include language that the
20 investment in the vessels primarily financial in
21 nature, that the investment would be primarily
22 financial in nature, without the ability and intent to
23 directly or indirectly control the vessel's operation
24 by a member of the group.

25 Our comment is that we agree with the

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1 intent the Coast Guard ascribes to this section in the
2 discussion, and we support that intent.
3 Unfortunately, however, we believe that Section (a)(6)
4 and supporting definitions used throughout the
5 discussions, such as those for affiliate, subsidiary,
6 group and the aggregate revenues test, need rewording
7 or elucidation in order to accomplish the goals as
8 stated in the discussion.

9 The proposed rule would also modify
10 Section 46 CFR 67.20(a)(9) to prohibit the charter-
11 back to a member of the group in which the vessel's
12 owner is a member. It would provide an exception
13 allowing charter-back agreements if it is for the
14 purpose of carrying proprietary cargoes. We agree
15 with the Coast Guard's stated purpose that the lease
16 financing provision was intended as a very limited
17 exception to the Coast Guard's Section 2 ownership
18 principle and other control principles of the Jones
19 Act.

20 The revisions to (a)(9) do go a long way
21 towards closing the perceived loopholes in the
22 implementation initially of the lease financing
23 provisions of the Coast Guard Authorization Act of '96
24 but may still require some rewording. The addition of
25 an exception for the carriage of proprietary cargoes

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1 appears to be in accord with the current proprietary
2 cargoes exception found in the law, for example, in
3 Bowaters. And the final resolution of this issue may
4 require further legislative efforts, which we would
5 support.

6 The proposed rule revises 46 CFR 67.20(b)
7 to modify the grandfather provisions of the final rule
8 to a maximum of three years. We fully support this
9 provision. We believe that this provides a reasonable
10 time frame for companies to come into compliance with
11 the rule or to divest.

12 Third, the rulemaking raises an issue
13 whether 46 CFR Part 67.179 should be revised to
14 required third-party auditors to review documentation
15 requests prior to approval. We feel that the National
16 Vessel Documentation Center should be able to request
17 and obtain any technical support required to assist
18 them in reviewing complex transactions such as the
19 ones that have been entered to date. While all
20 agreements may not be needing external review, there
21 may be certain triggers to establish when in the Coast
22 Guard's discretion such a review is required.

23 Toward that end, the Coast Guard has asked
24 eight additional questions. For the sake of brevity
25 of our comments, I will pass on most of those, but the

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1 questions that should an independent auditor be used,
2 we submit that an independent auditor should be used.

3 What are the minimum requirements and qualifications?

4 The qualifications need to be recommended and
5 developed for the Coast Guard by specialists who
6 handle similar transactions. Who should select the
7 auditors? The Coast Guard. If the applicant selects
8 the auditor, how should the Coast Guard ensure the
9 auditor is independent? We believe that the Coast
10 Guard should identify and select auditors in each
11 case. And the rest of the questions are along a
12 similar line and will be addressed in our final
13 comments.

14 Finally, in the rulemaking, MARAD proposes
15 to revise 46 CFR Part 221 to require prior approval
16 from MARAD prior to any charter-back agreements. When
17 MARAD requested comments to its approval of charter
18 agreements, OMSA commented that MARAD should reassume
19 this duty. And the final analysis, of course, if the
20 Coast Guard's final rule and this second proposed
21 rulemaking results in prohibition of charter-back
22 agreements, the question would apparently become moot.

23 If charter-back agreements are allowed but
24 questionable transactions for documentation and/or
25 charter-back are reviewed by independent auditors

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1 selected by the Coast Guard such a review by MARAD may
2 not be called for. However, in the final case, if the
3 Coast Guard proposals do not so provide, supervision
4 and prior approval of charter-back agreements by MARAD
5 would be imperative in order to prevent transactions
6 that result in illegal activities, directly or
7 indirectly, by non-Section 2 citizens and in some
8 cases Section 2 citizens acting in collusion with non-
9 Section 2 citizens.

10 I wish to thank you, gentlemen, sir, for
11 the opportunity to enter our preliminary comments,
12 and, as I've suggested, we will have final full
13 comments to follow.

14 MR. WILLIS: Our next speaker is Mr.
15 Michael Roberts of Thompson Coburn.

16 MR. ROBERTS: Good morning. My name is
17 Michael Roberts. I'm a partner with the law firm of
18 Thompson Coburn in Washington, and I am here today
19 speaking on behalf of myself. I represent a number of
20 companies and associations involved in this issue,
21 some of which are here today, and so I'll keep my
22 comments brief, and I think the important thing is
23 that you hear from the people who are really affected
24 by this and not just me. But I do want to make three
25 points, briefly.

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1 First of all, and it has been said
2 already, what is at stake here is vitally important.
3 It is American control over the domestic maritime
4 industry. Almost every transaction that's been
5 processed under the lease financing provision that I'm
6 aware of has been perfectly fine. It has involved
7 financial institutions that have provided money to
8 American operators and has had the effect overall of
9 reducing our capital costs. That's what I'm told.
10 And I think that's perfectly fine.

11 There have been a handful of transactions
12 in which the intent of this provision has been turned
13 on its head, and that's the reason we're here today.
14 And if those transactions are allowed to stand and to
15 stand as precedent for others, it does completely open
16 up the domestic maritime industry to foreign control.

17 The second point I'd make is that that
18 clearly is not what Congress had in mind when they
19 passed the 1996 Act. I think if you asked any of the
20 members of Congress or the staff who were involved in
21 the 1996 amendments, whether this provision was
22 intended to allow a foreign-based maritime company to
23 use this provision in order to get into the domestic
24 American maritime trades and compete with American
25 companies, the answer would be, to a person, no,

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1 that's not what was intended by this provision. And
2 if it's allowed to happen, as I say, the control of
3 this industry by Americans is at stake.

4 The third thing I would like to say is
5 that I think the Coast Guard clearly has gets it at
6 this point. It's a difficult question, and we
7 appreciate the work that's been done on this, and we
8 have a great deal of respect for the struggle that's
9 been involved and kind of going through very subtle
10 transactions, subtle differences and kind of coming to
11 grips with the distinctions that make this provision
12 helpful, on the one hand, to the American maritime
13 industry, on the other hand, threaten really its very
14 existence.

15 And what we read in the final rule
16 published on February 4 and in the proposed rule tells
17 us, I would say, again, speaking for myself but having
18 a pretty good idea of what the industry feels about
19 this, that the Coast Guard does understand this and
20 the Maritime Administration also. So we appreciate
21 that very much.

22 I think the final point I would make is
23 that while you have a large group of transactions,
24 almost all the transactions that are perfectly fine,
25 you have a few that are, in the view of the American

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1 industry, improper. You have a transaction or two in
2 the middle here involving more complex questions,
3 particularly the BP transaction involving proprietary
4 cargoes. It's in a different category. I think the
5 Coast Guard proposed rule recognizes that. I don't
6 think there's anybody in the domestic industry that
7 has a problem with allowing that transaction to
8 proceed as it was originally designed. And I think
9 the proposed rule recognizes that and make a lot of
10 progress in moving forward with that.

11 We will be submitting detailed written
12 comments addressing the specific issues that you've
13 raised in the proposed rules, and I'll sort of cut off
14 right there unless you have any questions. Thank you
15 very much.

16 MR. WILLIS: Thanks very much, Mr.
17 Roberts. Next we will hear from Mr. John DeVierno
18 from Horizon Lines.

19 MR. DeVIERNO: Good morning,
20 representatives of the Coast Guard and the Maritime
21 Administration. My name is John DeVierno. I'll be
22 extremely brief. I appear today as counsel for
23 Horizon Lines, headquartered in Charlotte, North
24 Carolina. Horizon Lines is the largest domestic ocean
25 carrier, operating 16 ocean-going U.S.-flag vessels on

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1 regular routes between the Mainland and Alaska,
2 Hawaii, Puerto Rico and Guam. Horizon Lines is a very
3 active member of the Maritime Cabotage Task Force.
4 Horizon Lines appears today to emphasize to the two
5 agencies its strong agreement with the remarks to be
6 presented later this morning by Mr. Grill on behalf of
7 the Maritime Cabotage Task Force.

8 It is very important to be sure that the
9 implementation of lease financing is not used in any
10 way to diminish the protections afforded by the Jones
11 Act. The Task Force has very properly advanced
12 comments in support of that important principle in
13 prior stages of this docket, is going to be presenting
14 further comments today and I'm sure later in written
15 form. So I really don't intend to address any
16 specific issues today but appear to emphasize the
17 strong support by Horizon Lines of the positions taken
18 by the Task Force in this important matter.

19 And I think that the appearance of an
20 individual company -- sometimes here in Washington
21 associations are active, as they should be, and I, in
22 my career, have been a proponent of active
23 associations. But we made the effort to appear here
24 today just to underscore that individual member
25 companies very much appreciate and are fully behind

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1 the activities of their association in this matter.
2 And that's really it.

3 MR. WILLIS: Thank you very much.

4 MR. DeVIERNO: Thank you.

5 MR. WILLIS: Our next speaker is Mr. Brian
6 Miller of BP.

7 MR. MILLER: Good morning. Thank you for
8 the opportunity to speak this morning and for taking
9 on this task and appreciate all the engagement by the
10 community. I just want to make a few remarks to
11 underscore the importance from BP's perspective of the
12 activities that you're considering.

13 I'm Director of Government Affairs for BP
14 here in Washington, and I work with our shipping
15 business globally and with a number of the people in
16 the maritime industry here that are in the room.

17 Just want to make a few points focused on
18 the fact that BP is an oil and gas production company.

19 We are, in the U.S., the largest oil and gas
20 production company here, and on the vessel side we're
21 largely engaged in the transport of our own cargoes.
22 I want to walk backwards and just give a little
23 context around how we got to where we are today in
24 terms of our activities and then make a few comments
25 on the final rule and the proposed rule as well.

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1 I would just say that our Company with
2 full consent and Coast Guard knowledge we've relied
3 extensively on the lease finance law enacted in 1996
4 with respect to vessels we've acquired and vessels
5 that we currently have under construction. After
6 enactment of the law, we worked closely with the Coast
7 Guard and MARAD to set up a program to construct
8 vessels in the United States and shipyards here to be
9 operated by a third party, the Alaska Tanker Company,
10 that would then be time chartered back to BP.

11 Our Company probably has more at stake
12 than any other in this matter, because we're in the
13 process of the largest ongoing commercial shipbuilding
14 and construction program in the U.S. right now. We're
15 building four crude oil tankers out in California at
16 the NASCO Shipyard at a cost of roughly \$1 billion.
17 And that investment and those activities depend
18 largely on the lease finance law and the reliance that
19 we have.

20 We understand that there's been a great
21 deal of controversy out there about the law, but in
22 our discussions with industry and government, we have
23 reason to believe that our reliance on the lease
24 finance law is not problematic, and we hope that those
25 outcomes will be evident in what the agencies

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1 undertake here.

2 I would just say, finally, that BP's
3 financing program has been vetted in detail by MARAD.

4 As to the final rule, we're concerned that the final
5 rule, in part, and the proposed rule, in particular,
6 may affect legitimate transactions, such as those
7 undertaken by BP. We're very concerned about the
8 lease financing requirement in the final rule and the
9 limited nature of the grandfather period. We hope
10 that we can continue our cooperative working
11 relationship with the Coast Guard and MARAD, and get
12 some reasonable guidance as to the meaning of the
13 lease financing requirement. We're undertaking
14 efforts to get the clarity. We also hope that the
15 Coast Guard and MARAD will confer with one another to
16 ensure that the Coast Guard's actions do not frustrate
17 the BP MARAD-approved program.

18 On the proposed rule, we will be
19 submitting detailed comments and look forward to doing
20 so. I know that I also just want to make a couple
21 brief comments that I think I've highlighted but I
22 want to sort of define more clearly. Time charters
23 are essential to our business, because they're the
24 mechanisms that make shipping capacity available to
25 BP. If we cannot use the vessels we own here, there

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1 essentially would be no reason to finance them or to
2 build them, and the benefits of the jobs, efficiencies
3 in transportation of domestic crude oil would not be
4 gained.

5 Any invalidation of the time charters in
6 connection with lease financing would be a real
7 disastrous impact for our firm and for the business
8 that we engage in -- transferring crude oil.

9 I think I'll wrap up by saying again thank
10 you for the opportunity. We look forward to working
11 with all the interested parties in trying to come to a
12 resolution that respects the outcomes and the
13 objectives of the everyone engaged in this. So thank
14 you.

15 CAPTAIN BRUSSEAU: Before you leave --

16 MR. MILLER: Sure.

17 CAPTAIN BRUSSEAU: -- I think I heard you
18 say that you're going to make written comments.

19 MR. MILLER: Absolutely.

20 CAPTAIN BRUSSEAU: I think it's vital that
21 we understand your reference that invalidation would
22 be disastrous. We need to understand what mechanisms
23 are at work there, so I would ask you to be sure you
24 address that in your written comments.

25 MR. MILLER: Great. Thank you very much.

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1 CAPTAIN BRUSSEAU: Thank you.

2 MR. BLOOM: Mr. Miller --

3 MR. MILLER: Yes, Indeed.

4 MR. BLOOM: -- I have a question for you.

5 MR. MILLER: Please.

6 MR. BLOOM: Is all your cargo proprietary
7 cargo?

8 MR. MILLER: All of our cargo for the
9 Alaska trade currently is proprietary cargo. What I
10 would say is, and I know some of the folks in the room
11 won't necessarily agree with this, but let me give you
12 an example. We invest a billion dollars in four crude
13 oil tankers transporting cargo from Alaska to the west
14 coast, our domestic trade. What happens if something
15 were to occur in Alaska and we had no flexibility to
16 the pipeline? I mean we've had people go out and put
17 holes in the pipeline, the pipeline is rendered
18 inoperable for a period of time. We've got vessels
19 that go sitting idle, and if those vessels are sitting
20 idle, they become useless for us. They're rendered
21 useless because they're not able to engage in the
22 trade and the transactions that they were built for.

23 So I think a little bit of flexibility is
24 important and an understanding of the economic
25 proposition in allowing the company, a company like

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1 ours, to be able to economically use those vessels is
2 an important consideration. So I think reasonable
3 degrees of flexibility are key.

4 MR. BLOOM: Okay. Thank you.

5 MR. MILLER: Yes. Thanks.

6 CAPTAIN BRUSSEAU: Mr. Miller, will your
7 comments address the kind of hypotheticals or
8 situations that you just described in response to the
9 question from Mr. Bloom --

10 MR. MILLER: Yes, indeed.

11 CAPTAIN BRUSSEAU: -- and in detail so
12 that we can be helped to understand the nature of your
13 business --

14 MR. MILLER: This kind of business, sure.

15 CAPTAIN BRUSSEAU: -- so that we can craft
16 a solution that meets, to the greatest extent
17 possible, the needs of everyone?

18 MR. MILLER: We will, to the greatest
19 extent possible, get to the very finest points in
20 detail so that you have the ability to make the right
21 kinds of decisions. Thanks.

22 MR. WILLIS: Thank you. Mr. Philip Grill,
23 Matson and the Maritime Cabotage Task Force.

24 MR. GRILL: Good morning. I'm Philip
25 Grill, and I appear today as Chairman of the Maritime

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1 Cabotage Task Force and as Vice President of Matson
2 Navigation Company. Matson is a 120-year-old Jones
3 Act Company that owns and operates 13 U.S. flag
4 container ships in domestic offshore trade. The
5 Maritime Cabotage Task Force is the largest maritime
6 coalition ever assembled in the United States. Its
7 over 400 all-American members include inland and
8 waterborne carriers, seafaring labor, shoreside labor,
9 U.S. shipyards, defense organizations, and
10 representatives from all other modes of
11 transportation.

12 These organizations have joined MCTF in
13 support of the Jones Act, because they share a common
14 fundamental interest in assuring that American
15 companies and American citizens move the domestic
16 commerce of this nation. And in that connection, I've
17 listened very carefully to the first speakers, and I
18 would like to say that the MCTF fully endorses the
19 comments that have been already presented here this
20 morning by AWO, OMSA, Mike Roberts and Horizon Lines.

21 And we're also sympathetic to the BP situation as
22 well, and I'll comment on that.

23 But lease financing is the most critical
24 issue facing the Jones Act today. Without a careful
25 and limited implementation of the 1996 lease financing

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1 exception, as Congress clearly intended and stated in
2 the legislative history, this limited exception to the
3 ownership requirement could quickly become the rule
4 and resulting in a de facto repeal of the U.S.
5 ownership requirement.

6 Misuse of lease financing has profound
7 competitive consequences for the domestic American
8 maritime industry. It has been extensively documented
9 that companies operating in the United States that are
10 part of a foreign-based group have a competitive
11 advantage when competing against companies that
12 operate in a U.S.-based group. And I refer you, and
13 we will submit at the appropriate time, the report of
14 the Department of Tax Policy, U.S. Department of
15 Treasury, entitled, "Corporate Inversion Transactions,
16 Tax Policy Implications," and that report was released
17 two years ago in May 2002.

18 Now, I want to stress this was commented
19 on in the final rule, in the preamble to the final
20 rule. In raising this issue, MCTF is not asking the
21 Coast Guard or MARAD to create tax policy. We
22 understand that that's not your authority, that's not
23 your mission. Our point is, though, that if lease
24 financing is administered in the limited way that
25 Congress intended, then lease financing will not

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1 become an open invitation to import offshore tax
2 advantages into the domestic offshore trade.

3 Another fundamental reason for the U.S.
4 ownership requirement is to ensure that control of
5 America's domestic waterborne transportation system
6 remains in the hands of its citizens, not foreign
7 citizens or foreign governments. As the conference
8 report states, Congress did not intend to undermine
9 this basic principle of U.S. maritime law.

10 It is these two issues, unfair competition
11 and national security, this is the reason, these are
12 the reasons why the proper administration of lease
13 financing has been of such great concern to the
14 domestic American maritime industry.

15 We first became aware of special purpose
16 leasing companies about three years ago, and it was
17 immediately apparent that this structure was created
18 solely to avoid the coastwise citizenship requirements
19 and give a foreign ship operating company access to
20 the domestic waterborne trades; in short, a back door
21 to the Jones Act. This is a far cry from the
22 congressional intent that was expressed in the
23 conference report and a far cry from the domestic
24 industry's understanding of the way in which lease
25 financing would be used when it was enacted in 1996.

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1 There is no doubt that Congress enacted lease
2 financing as a narrow exception that would give U.S.
3 operators access to foreign capital, not as a trojan
4 horse around the U.S. ownership requirement.

5 The support within MCTF of our over 400
6 American organization members for the administration
7 of lease financing in the limited way that Congress
8 clearly intended is broad and deep. It spans across
9 the spectrum of our membership and across the country.

10 Over the last few years of attention on this year,
11 we've had the active involvement and support of Jones
12 Act ocean carriers, of inland waterway operators, of
13 offshore supply industry, American shipyards and all
14 of the American seafaring unions. We all support the
15 Jones Act, and we don't want to see the ownership
16 requirement emasculated, especially as an unintended
17 consequence.

18 It is apparent from the February 4 final
19 rule that the Coast Guard has recognized the
20 importance of the Jones Act and has written those
21 regulations to eliminate special purpose leasing
22 companies that are created merely to take title to
23 existing vessels. And on behalf of the Maritime
24 Cabotage Task Force, I would like to thank the Coast
25 Guard for its genuine effort to deal effectively with

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1 these very difficult and complex questions.

2 If the right choices are made with the
3 proposed regulations, then we believe that the lease
4 financing exception can achieve the original objective
5 of giving Jones Act companies access to lower cost
6 international capital and at the same time cut off
7 overly created abuses. We, of course, will submit
8 detailed written comments, but I'd like to mention two
9 points on the proposed rule.

10 First, because vessel operations are
11 often understood to cover only the activities related
12 to the mechanical operation of the vessel and not its
13 business use, Alternative 1 may not prevent a lease
14 finance foreign owner from time chartering a vessel
15 through a Section 2 citizen back to itself. That is,
16 as long as the time charterer does not control the
17 relatively narrow band of functions that relate to the
18 physical operation of the ship, the arrangement may
19 not violate (a)(6), as proposed even the foreign time
20 charterer and the foreign owner are affiliated. So
21 MCTF strongly urges that (a)(6) be amended to make it
22 clear that charter-backs to an affiliate of the owner
23 are prohibited if the affiliate has the ability and
24 intent to directly or indirectly control either the
25 physical operation of the vessel or the economic and

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1 business management of the vessel.

2 It is this foreign economic control, not
3 just control over the physical operation, that causes
4 the greatest concern to U.S.-based Jones Act
5 competitors about unfair economic mischief from
6 offshore tax havens. So it is essential that
7 Alternative 1 address economic control as well as
8 physical control.

9 My second point on Alternative 2 is that
10 MCTF believes that proprietary cargo is a reasonable
11 exception to the outright prohibition on charter-backs
12 contained in Alternative 2, because these foreign-
13 controlled vessels are not competing in the
14 marketplace against U.S.-based carriers for day-to-day
15 business. And I cite as an example BP America's
16 construction of the new Jones Act tankers to carry
17 their own cargo in domestic trade.

18 So, finally, I will say that we do
19 recognize that the vast majority of vessel lease
20 financings are legitimate arrangements, they involve
21 bonafied financial institutions and American maritime
22 interests. The task facing the Coast Guard and MARAD,
23 of course, is to finish the job started and recognized
24 in the final rule.

25 I thank you for listening, gentlemen, and

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1 I'd be happy to answer any questions you have.

2 CAPTAIN BRUSSEAU: Mr. Grill, I hope that
3 your written comments will elaborate on your concerns
4 in respect of the economic or business management for
5 the vessel and give us some specifics as to what your
6 concerns are and perhaps also suggestions as to how we
7 might crack that nut, if you would.

8 MR. GRILL: Yes, sir. That's a key point
9 and we will certainly address that as best we can.
10 Thank you.

11 MR. WILLIS: Mr. Ned Moran of Moran
12 Towing.

13 MR. MORAN: Good morning. My name is Ned
14 Moran, and I represent Moran Towing. I'm also honored
15 to be the incoming Chairman of the American --
16 incoming Chairman of the Board of American Waterways
17 Operators. Before I begin my short remarks, I'd like
18 to thank the Coast Guard and MARAD for holding this
19 hearing and for the work they have done thus far to
20 close the lease financing loopholes that threaten the
21 U.S. flag marine industry. My goal today is to
22 convince you to resolve those final outstanding issues
23 in such a way that we can go about our business
24 knowing that the playing field is even and fair.

25 Moran is 144-year-old tug and barge

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1 company. We employ nearly 1,000 citizens. We own and
2 operate 80 tugs and 30 barges. All of our equipment
3 and all of our focus is on the U.S. flag. For us, the
4 Jones Act is the foundation of every investment
5 decision we consider. In the last ten years, we have
6 invested \$185 million in floating equipment. As we
7 look out over the next five years, we anticipate
8 investing another \$71 million in new equipment.

9 These dollars have been and will be
10 invested with the reliance that the Jones Act will
11 continue to preserve the U.S. ownership requirements
12 of our cabotage laws. To contemplate anything less,
13 any change in that fundamental understanding would put
14 our financial future in extreme jeopardy. Thank you
15 for your time.

16 MR. WILLIS: Mr. Jim Sweeney of Penn
17 Maritime.

18 MR. SWEENEY: Good morning. I'm Jim
19 Sweeney. I'm Vice President of Operations for Penn
20 Maritime, Inc. Penn Maritime is a privately owned
21 coastal tug and oil barge operator. We're based in
22 Connecticut and maintain offices in New York and
23 Louisiana. Our fleet comprises 13 ocean tugs and 28
24 oil barges. We operate in the east and Gulf Coast
25 moving primarily black oil products for all of the

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1 major oil companies. We employ about 300 people, most
2 of which are members of the two largest unions
3 representing seafarers.

4 In the last ten years, we've invested over
5 \$200 million in double-hull barges and their
6 accompanying tugboats. In 2003, we took delivery of
7 three double-hull barges built in Alabama, which cost
8 us over \$40 million. In December of this year, we'll
9 take delivery of our newest integrated tug barge,
10 which is being built in Sturgeon Bay, Wisconsin at a
11 cost of over \$25 million.

12 Penn Maritime has committed their funds to
13 the construction of these vessels based on the
14 continued existence of the Jones Act as we have
15 traditionally known it. We feel that our investments
16 will be jeopardized until such time that a rulemaking
17 is finalized that preserves the U.S. ownership
18 requirements of the cabotage laws.

19 We thank the Coast Guard and MARAD for
20 giving us an opportunity to come here today. We
21 believe that the February 4 final rule was an
22 important step in closing the lease financing loophole
23 that potentially could severely harm our investments
24 in the Jones Act vessels and potentially lead to the
25 loss of U.S. control of the domestic fleet. It's

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1 important that prompt action be taken to resolve the
2 issues that are raised in the NPRM in order to ensure
3 that we will not be faced with loopholes in the
4 future.

5 We would suggest that charter-back
6 arrangements not be permitted for any vessel except
7 those vessels which may be carrying cargo owned by the
8 vessel owner. We suggest that the grandfather
9 provisions should not be allowed to extend beyond the
10 maximum of 36 months which should be ample time for
11 any owner to restructure their investment to ensure
12 compliance with the regulations. We believe that a
13 public notice and review procedure should be
14 established to supplement the Coast Guard
15 documentation, application evaluation. This would aid
16 the Coast Guard by utilizing expertise of those in the
17 industry.

18 Penn Maritime appreciates the attention
19 that the Coast Guard and MARAD are devoting to this
20 matter. It is imperative that this rule be finalized
21 properly and that our company that has been in
22 business for over 60 years be able to continue
23 operating without unfair competitive advantages being
24 created.

25 One final comment that I would have is

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1 that when we talk about some of the lease-back vessels
2 that are going to be carrying their own cargo, I've
3 heard concerns that what happens if something
4 interferes with their vessels. My question to that
5 would be what happens if those vessels come in and
6 interfere with our business if we're the ones who are
7 actually moving other of their cargoes? We don't need
8 to have competition that's put before us. The same
9 way as our customers go out of business there's
10 certain risks that we take just by being in business.

11 Thank you. Any questions?

12 MR. BLOOM: Mr. Sweeney?

13 MR. SWEENEY: Yes.

14 MR. BLOOM: I assume your support for a
15 public notice procedure would not be necessary if we
16 indeed prohibit the charter-back.

17 MR. SWEENEY: If it was prohibited, there
18 wouldn't be any need for it.

19 MR. BLOOM: Okay.

20 MR. SWEENEY: But if they're unprohibited,
21 then I think we use the expertise that is in the
22 industry to find out if these are the appropriate
23 people that should be having vessels.

24 MR. BLOOM: Okay. Thank you.

25 CAPTAIN BRUSSEAU: One more point: I

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1 think you're the second person who's suggested public
2 scrutiny in these cases. If there are written
3 comments submitted, if people's written comments
4 especially could address how long should a public
5 scrutiny period like that take, because I can imagine
6 that time is of the essence when we're looking at
7 that.

8 MR. SWEENEY: We would not be looking for
9 a long time. As long as the information is out there,
10 I think it behooves those that are interested to get
11 comments in promptly to you. We wouldn't want to
12 delay any kind of a process.

13 CAPTAIN BRUSSEAU: Also on that point, if
14 you could address in your -- and the other individual
15 or individuals who advocate for public scrutiny of the
16 charter arrangements or the applications, if they
17 could address the questions in respect of the
18 protection of proprietary information that's
19 submitted, that would be useful also.

20 MR. SWEENEY: We're a firm believer, being
21 a privately held company, of having proprietary
22 information preserved, I can assure you. And there
23 are some people in this room know exactly what I'm
24 talking about. Thank you.

25 (Laughter.)

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1 CAPTAIN BRUSSEAU: Thank you.

2 MR. WILLIS: Mr. Mort Bouchard of Bouchard
3 Transportation.

4 MR. BOUCHARD: Good morning. I'm Morton
5 Bouchard, President and CEO of Bouchard Transportation
6 Company, Incorporated and Bouchard Coastwise
7 Management. Bouchard affiliates are located on Long
8 Island, New York. Bouchard Transportation Company,
9 Incorporated was started in 1918 by my great-
10 grandfather, Captain Fred Bouchard and passed on down
11 to my grandfather, my father and to myself -- the
12 family's fourth generation.

13 Over the past 90 years plus Bouchard's
14 operation has grown into one of the largest ocean-
15 going petroleum barge companies on the east and Gulf
16 coast of the United States. Bouchard's management
17 philosophy has consistently remained the same from one
18 generation to the next, maintaining the fleet in a
19 first class manner and invest profits in new and more
20 modern equipment.

21 Bouchard affiliates today operates a fleet
22 of 28 ocean-going petroleum barges and 18 tugs, of
23 which 12 are double hulls with the 13th under
24 construction with a delivery date of May of '04. We
25 are also in the final stages of negotiating our next

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1 double-hull construction program with two U.S.
2 shipyards. I'm also proud to report that Bouchard
3 affiliates employs well over 275 Jones Act seamen and
4 has built all of our vessels in U.S. shipyards without
5 funding from MARAD or Wall Street.

6 As you can freely conclude, the
7 preservation of the Jones Act is of vital importance
8 to the future of Bouchard and our employees. Since
9 the passing of the Oil Pollution Act of 1990, Bouchard
10 affiliates has invested well over \$250 million into
11 rebuilt double-hull ocean-going petroleum barges, all
12 in U.S. shipyards that meet and exceed OPA-90
13 regulations. This type of investment is one that is
14 enormous for any size company and was made with the
15 complete understanding and long-term business plan
16 that the U.S. Jones Act would be preserved.

17 If we had any belief that the Jones Act
18 would not be preserved, we would not have gone ahead
19 and built these more modern equipment. I have to ask
20 you gentlemen one question: If Bouchard didn't make
21 this investment back in 1990, how would the Gulf Coast
22 energy and the East Coast energy needs be met this
23 winter considering the type of weather we've had?

24
25 Gentlemen, my point is very simple. Over

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1 the past 100 years, our industry, through AWO, Chamber
2 of Shipping and various other organizations, has
3 worked hand in hand with the United States Coast
4 Guard, MARAD and Congress to see that the U.S. Jones
5 Act is preserved. I commend the United States Coast
6 Guard's February 4, 2004 ruling, which took a major
7 step in closing the lease financing loophole and has
8 placed United States control of vessels operating
9 within U.S. waters as well as the thousands of U.S.
10 shipyard workers.

11 However, this job is far from complete. I
12 urge you as a fourth generation owner of a large Jones
13 Act company to finish the task at hand. I urge the
14 U.S. Coast Guard and MARAD to take prompt and swift
15 steps to resolve the issues that were raised in the
16 NPRM or all that was accomplished in this most unfair
17 loophole may be done away with.

18 At a later date, I will submit a brief,
19 which Mr. Jim Sweeney and Jennifer commented on, which
20 I won't go into at this point in time. I would like
21 to express my sincere thanks to the Coast Guard and
22 MARAD for taking the time to entertain this most
23 important issue and ask for your assistance in closing
24 this loophole. Thank you. If you have any questions

25 --

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1 CAPTAIN BRUSSEAU: You are going to make
2 written comments?

3 MR. BOUCHARD: Yes, I will.

4 CAPTAIN BRUSSEAU: Okay. Thank you.

5 MR. BOUCHARD: Most definitely.

6 MR. WILLIS: Thank you. Mr. Skip Volkle
7 of Maritrans.

8 MR. VOLKLE: Gentlemen, I'm Skip Volkle.
9 I'm Vice President of Maritrans Operating Company, LP,
10 headquartered in Tampa, Florida. Maritrans is one of
11 the largest U.S. owner operators in the domestic
12 coastwise trade. We have 13 tug barge, super tug
13 barge units and four oil tankers engaged in petroleum
14 transportation in the coastwise trade.

15 In the last four years alone, we have
16 spent over \$100 million on construction in U.S.
17 shipyards of OPA double-hull tonnage and currently
18 plan within the next three years to spend about that
19 much more in U.S. shipyards for OPA-qualified double-
20 hull tonnage. And as all of the U.S. operators that
21 have come up here before me have reiterated, and it's
22 absolutely true, our investment in this -- in U.S.
23 shipyards, in construction of U.S. flag tonnage is
24 absolutely predicated on the viability of the Jones
25 Act. And we believe that the lease financing

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1 exception did and does create a massive loophole that
2 threatens U.S. control of shipping in the Jones Act
3 trade.

4 We U.S. flag Jones Act owners and
5 operators operate under strict legal, regulatory and
6 tax burdens that no foreign flag owners need to comply
7 with, and we thank the Coast Guard and MARAD for their
8 proper understanding of this issue and the way that
9 they addressed initially the lease financing issues in
10 the final rule that you issued back in February.

11 We believe that the lease financing
12 amendment was intended as a financing method.
13 Ironically, it was sold as an effort to enhance the
14 Jones Act by providing additional sources of capital.

15 And in many instances, it's done that. It has
16 provided for outside capital and lowered our capital
17 costs. But in some transactions, it's raised a
18 fundamental threat to U.S. ownership of vessels
19 engaged in a coastwise trade. And we believe that the
20 Coast Guard is absolutely correct in its
21 interpretation of the lease finance law, and we really
22 applaud your efforts in the final rule to close the
23 loopholes that did raise this threat to U.S. control.

24 And as virtually everybody that's spoken
25 before has said, we also agree that the job is not

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1 quite done yet, but in looking at the proposals in the
2 proposed rulemaking, I think that the Coast Guard does
3 get it, and we are hopefully going to come together
4 and come up with a regulatory scheme or is identical
5 to what Congress really intended, and that is to have
6 a financing mechanism, not a mechanism for foreign
7 control of Jones Act tonnage.

8 With respect to the specific questions
9 that were asked, Maritrans, like, again, many of the
10 -- like all of the U.S. flag operators that have gone
11 before, do support Alternative 2 in the proposed rule,
12 and that is to absolutely prohibit lease-back except
13 in cases where an operator is carrying proprietary
14 cargoes. The prohibition -- the absolute prohibition
15 on lease-back is essential to ensure that we don't
16 open a huge gaping hole in the limitations imposed by
17 the Jones Act.

18 With respect to the grandfather provision,
19 again, we support the proposal that there be a three-
20 year grandfathering. That gives more than adequate
21 time for companies that have structured transactions
22 which we believe to be inconsistent with the statutory
23 scheme to restructure their transactions to a
24 structure that is more in accordance with what
25 Congress intended and what the Coast Guard has adopted

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1 in the final rule.

2 With respect to the audit questions, one
3 concern we have -- we believe that some mechanism has
4 to be in place to review these transactions. We are
5 somewhat concerned that the Coast Guard may not have
6 the resources and the expertise to properly vet these
7 various transactions, and there should be an
8 opportunity, whether it is for every single one of
9 them or ones that go beyond what is clearly and
10 apparently a financing transaction, there needs to be
11 some mechanism for the Coast Guard to obtain the
12 expertise. Whether they do that by developing the in-
13 house expertise, that's fine, but given the current
14 budgetary situation, I doubt that the Coast Guard's
15 going to want to devote resources to this issue, but
16 there needs to be a mechanism for the Coast Guard to
17 get some outside advice or certification.

18 That doesn't mean, and there was a
19 question raised as to whether that was a delegation of
20 government functions, I don't believe that the vetting
21 by some outside auditor of expert should be the end of
22 the matter. The Coast Guard needs to retain the final
23 approval or disapproval authority, but the Coast Guard
24 should set up some mechanism to provide the advice and
25 audit to ensure that these structures do mirror what

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1 Congress intended and what is required by the Jones
2 Act.

3 There are a lot of tricky folks out there
4 doing a lot of tricky things, and so it's really
5 incumbent on the Coast Guard to be able to bring the
6 expertise to bear to make sure that we are not
7 jeopardizing the principle of U.S. control.

8 Finally, with respect to the issue of
9 MARAD approval, we strongly believe, as I said
10 earlier, that there should be an absolute prohibition
11 on lease-backs to other subsidiaries or affiliates,
12 and therefore if we have an absolute prohibition on
13 lease-backs, then MARAD's approval would not be
14 necessary. But we do believe that when there are
15 lease financing transactions that are proposed, that
16 there should be public scrutiny and the opportunity
17 for the public to see what's going on because of the
18 fundamental importance of the Jones Act. Thank you.

19 CAPTAIN BRUSSEAU: Thank you.

20 MR. WILLIS: Mr. John Nicola of K-Sea
21 Transportation.

22 MR. NICOLA: Good morning, gentlemen. My
23 name is John Nicola, and I'm the Chief Financial
24 Officer of the K-Sea Transportation Partners, LP.
25 We're located in Staten Island, New York. We provide

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1 maritime transportation services to major oil
2 companies and others in the Northeast and in the Gulf
3 of Mexico. We operate 36 tank vessels and 19
4 tugboats. We employ about 400 U.S. citizens, generate
5 about \$85 to \$90 million in annual gross revenue.

6 Our company, as it is structured
7 currently, was borne out of a management buy-out in
8 1999. Since then we've invested over \$70 million to
9 double-hull our Jones Act fleet to comply with OPA-90,
10 to make the safety and productivity enhancements that
11 are necessary to operate safely and efficiently.
12 These investments were made in reliance on the
13 continued integrity of the Jones Act and would be at
14 risk to us and our public investors unless this
15 rulemaking is completed in a way that preserves the
16 U.S. ownership requirements of the cabotage laws.

17 I mentioned our public investors. It's
18 not unfair to point out that we recently raised \$100
19 million in U.S. equity markets without the need for
20 foreign resources. We at K-Sea are very appreciative
21 that the Coast Guard and MARAD via this hearing are
22 giving companies like K-Sea the chance to express our
23 strong views about the continued strength of the Jones
24 Act.

25 The Coast Guard's February 4 final rule

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1 was a major step toward closing the lease financing
2 loophole that has placed the U.S. control of the
3 domestic fleet and K-Sea's investment in Jones Act
4 vessels in jeopardy. However, as has been pointed
5 out, this job is not completely finished. It's
6 essential that the Coast Guard and MARAD take prompt
7 action to resolve the issues raised in the proposed
8 rule or the loophole will only be narrowed. We fully
9 support the suggestions made by Jennifer Carpenter of
10 AWO and others to resolve these issues.

11 We at K-Sea would again like to thank the
12 Coast Guard and MARAD for their attention. Getting
13 this rule right and quickly is vital to the future of
14 K-Sea and all other companies which operate under the
15 spirit and intent of the Jones Act. Thank you very
16 much.

17 MR. WILLIS: Thank you. That concludes
18 the list of persons who had signed up in advance. Are
19 there -- yes, Mr. Quist?

20 MR. QUIST: I signed up.

21 MR. WILLIS: Two more? Okay. We're going
22 to take in any order. Mr. Butchman.

23 MR. BUTCHMAN: Good morning. I hardly
24 feel a need to add my two cents worth, because I think
25 I've rarely been to a hearing where there's been such

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1 unanimity of views expressed, and I must admit that
2 I'm on all four squares with just about everything
3 that's been said this morning.

4 But since I have a very extensive two-
5 page, double-spaced statement, I shall proceed.

6 (Laughter.)

7 I'm Alan Butchman, the Vice President for
8 Government Relations for Saltchuk Resources. Saltchuk
9 is a privately owned holding company for three primary
10 types of domestic maritime businesses. First, Totem
11 Ocean Trailer Express, or TOTE, and Sea Star Line
12 operate liner vessels to Alaska and Puerto Rico,
13 respectively. TOTE also has two ro-ro liner vessels
14 on charter to the military supporting Operation Iraqi
15 Freedom and a third on charter to Matson for service
16 in Hawaii -- to Hawaii.

17 Second, Saltchuk owns several tug and
18 barge companies that provide harbor services, towing,
19 tanker escort and related services on the west and
20 Gulf coast and in Alaska and Hawaii. And, finally,
21 Interocean Ugland Management Corp., another Saltchuk
22 subsidiary, provides ship management services for U.S.
23 flag carriers and the Maritime Administration.

24 Saltchuk has invested significant amounts
25 of capital in these Jones Act companies in reliance on

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1 the provisions of the Jones Act. Just last year, TOTE
2 took delivery of two new 650 FEU ro-ro ships that were
3 built at NASCO in San Diego, and these were financed
4 with Title 11. Without the requirements for U.S.
5 construction, U.S. registry and U.S. citizenship or
6 citizen ownership, Saltchuk would not have made its
7 \$350 million investment in those ships, U.S. shipyard
8 workers would not have built the ships, and Alaskans
9 would not have had the improved service that those
10 ships provide.

11 While Saltchuk intends to file written
12 comments in this proceeding before May 4, I wanted to
13 emphasize just a couple of points. As I say, these
14 have been well covered by those folks who have been up
15 here, but to say we certainly support the Alternative
16 2 in the Coast Guard's proposed rule. We think that
17 chartering back is something that should not be
18 permitted except in those cases such as BP described
19 or a Bowaters kind of situation.

20 And with reference to the grandfathering
21 provisions, we think that the proposed 36 months is
22 entirely adequate, and I would also associate myself
23 with the comments that have been made as far as public
24 scrutiny is concerned, sort of that third major area
25 of comment.

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1 We were very concerned when a statute that
2 was intended to make capital more available for
3 constructing ships in the U.S. for the Jones Act trade
4 became the vehicle for foreign operating companies to
5 attempt to enter those trades. We applaud the Coast
6 Guard for recognizing this threat and issuing a final
7 rule in February that goes a long way toward closing
8 this unintended loophole. There remains work to be
9 done, and that's why we're here this morning, and
10 we're most hopeful that current proposed rule will be
11 dealt with expeditiously to finish the job. And I
12 thank you very much for providing me the opportunity
13 to give you these comments this morning.

14 MR. WILLIS: Thank you, sir. Mr. Marinus
15 Quist of Tidewater.

16 MR. QUIST: Good morning. I'm delighted
17 to get an opportunity to speak this morning. My name
18 is Marinus Quist. Most people call me Marty. I'm
19 Assistant General Counsel with Tidewater, Inc. of New
20 Orleans, Louisiana. Tidewater, Inc., through its
21 various subsidiaries, owns and operates one of the
22 largest fleets of offshore oil and gas exploration and
23 production support vessels in the U.S., if not the
24 world. We currently have somewhere in the
25 neighborhood of 200 U.S. flag vessels in the fleet,

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1 and in the past five years we have spent hundreds of
2 millions of dollars in investment in new domestic
3 tonnage for that fleet.

4 As you can well imagine, Tidewater, as a
5 U.S.-based company, has always been a strong supporter
6 of the U.S. cabotage law, commonly known as the Jones
7 Act. We became particularly concerned after Congress
8 passed the lease financing amendment to the Shipping
9 Act in 1995. While the purpose of this amendment was
10 laudable, i.e. to broaden sources of capital for
11 owners of U.S. flag vessels engaged in the coastwise
12 trade, we began to see it used instead as an
13 instrument whereby foreign owners could gain an entry
14 into the U.S. coastwise trade, something Congress
15 clearly never intended.

16 First, we would like to take this
17 opportunity to commend and thank the Coast Guard for
18 recognizing the potential for this abuse and by
19 addressing it in the final regulations published on
20 February 4, 2004. I know I sound like an echo but, as
21 has been said before, unfortunately, the task is not
22 quite done, as some very significant loopholes remain.

23 Hence the reason for this rulemaking, which we're
24 pleased to see involves MARAD as well.

25 Although Tidewater plans to submit

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1 detailed written comment before the end of the comment
2 period, we would like to take this opportunity to
3 briefly summarize our position with respect to the
4 Notice of Proposed Rulemaking as follows.

5 One, the charter-back issue. It is our
6 position that this is the most serious loophole
7 mechanism employed by foreign owners to undermine the
8 Jones Act. As far as we are concerned, except for
9 rare transactions involving the carriage of
10 proprietary cargo, charters back to an affiliate of a
11 foreign owner are never justified and in every case
12 involve the owner to a much greater degree than just
13 passive financing. In fact, ownership coupled with a
14 charter-back gives the owner/charter impermissible
15 control over a U.S. flag vessel engaged in the
16 coastwise trade.

17 For that reason, we most strongly support
18 the Coast Guard's Alternative Number 2, which
19 effectively prevents the chartering back to a member
20 of the owner's group unless used for the carriage of
21 proprietary cargo.

22 The Coast Guard's Alternative 1, we feel,
23 doesn't go far enough, would be difficult to
24 administer and enforce and would likely require the
25 development of yet further complex criteria by which

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1 the Coast Guard would try to make determinations about
2 what constitutes operational, management and/or
3 economic control. We believe the Coast Guard has
4 neither the time nor the resources to get bogged down
5 in such minutia.

6 Additionally, Alternative 2 is the more
7 attractive of the proposals, because it will also make
8 MARAD's job vastly simpler, as the only charter-back
9 arrangements that it will need to review in those
10 cases would be those involving proprietary cargo. And
11 we do think MARAD ought to be involved in those.

12 Now, while we would like to see all
13 schemes involving undermining of the Jones Act ended
14 immediately, we recognize some parties have in good
15 faith relied upon and made economic decisions based on
16 the Coast Guard's rulings or issuance of CODs in the
17 past. Therefore, we are willing to support the Coast
18 Guard's compromise of three years, which we find to be
19 not unreasonable.

20 Now, with respect to third party review,
21 since neither the Coast Guard nor MARAD have the
22 resources to closely examine lease financing schemes,
23 we support third party review by independent experts,
24 and we'll have more to say about this in our detailed
25 written comments. However, at this time, we would

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1 like to suggest that MARAD and the Coast Guard jointly
2 establish a panel of qualified experts to
3 independently investigate and review all applications
4 for vessels to be documented under the coastwise trade
5 involving lease financing.

6 We think that the Maritime Administration,
7 while it may not have the resources, it is uniquely
8 qualified to get involved in this aspect of the review
9 process, because they have had a long history of very
10 diligently reviewing citizenship -- a small salute to
11 Doris Lansbury there -- Title 11 financing, capital
12 construction fund. So we feel that MARAD's
13 involvement in this process is a very important one.

14 Now, if Alternative 2 is chosen, I think
15 the review process for MARAD would be quite narrow,
16 that for a proprietary cargo only, but I think they
17 ought to still be involved in the application review
18 process and the oversight of the third party review
19 that we just discussed.

20 Do I have any questions?

21 MR. BLOOM: I have one. Mr. Quist, in
22 your trade, is it clear when cargo is proprietary and
23 when it is not?

24 MR. QUIST: Except for natural resource
25 companies that might own their own fleets, I would say

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1 that proprietary cargo has not really raised its head.

2 In other words, I don't see it in our industry except
3 if you have a natural resource company that may be
4 moving some of its own equipment or its own product.
5 No, it's not something we see very often.

6 MR. BLOOM: Thank you.

7 MR. WILLIS: Is there anyone else who
8 wishes to be heard? If no one else wishes to be
9 heard, we will conclude this meeting very shortly.

10 I do have one particular concern. We've
11 heard the term, "proprietary cargo, used a number of
12 times. I would hope that the detailed submissions we
13 get for the record will help us define proprietary
14 cargo. I have seen items defined as proprietary cargo
15 in the past to avoid inspection laws, not
16 documentation laws, and so I think we need to have a
17 clear understanding of what we are talking about so
18 that we avoid further problems down the line.

19 I'd like to thank everybody for their
20 participation. Those who participated merely by
21 coming and observing, and I fully invite your comments
22 to the record in as much detail as possible. I would
23 remind you that the comment period closes on May 4,
24 and in the interest of concluding this in an
25 expeditious manner, I hope we don't see a lot of

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1 requests for an extension of the comment period. This
2 has been a long and torturous process as it is, and I,
3 for one, am anxious to try to bring this to a close.

4 Are there any other remarks?

5 MR. BLOOM: I just wanted to add that to
6 the extent you give us a road map of what you think we
7 should do, that would make our job easier in deciding
8 what to do. Thank you.

9 MR. WILLIS: Thank you.

10 CAPTAIN BRUSSEAU: Thanks very much.

11 (Whereupon, at 10:23 a.m., the Public
12 Comment hearing was concluded.)
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